

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :
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 SCHOOL DISTRICT OF GLENWOOD CITY :
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 Involving Certain Employes of : Case 7
 : No. 39158 ME(u/c)-203
 : Decision No. 20949-A
 SCHOOL DISTRICT OF GLENWOOD CITY :
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Appearances:

Mr. James H. Begalke, Executive Director, West Central Education Association, 105 - 21st Street North, Menomonie, WI 54751, appearing on behalf of the Association.
 Mulcahy & Wherry, S.C., Attorneys at Law, by Ms. Kathryn J. Prenn, 21 South Barstow, Eau Claire, WI 54701, appearing on behalf of the District.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

On July 20, 1987 the School District of Glenwood City filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit by excluding from it the position of Head Custodian. (Although the parties commonly identified the position by the title of Head Custodian, the job description carries the title of District Maintenance Supervisor/Head Janitor.) The parties mutually agreed to delay hearing in the matter pending attempts to resolve the matter. Hearing in the matter was held in Downing, Wisconsin on February 4, 1988, before Douglas V. Knudson, a member of the Commission's staff. A stenographic transcript of the hearing was received on February 26, 1988. The parties filed briefs by April 13, 1988. The Commission, being fully advised in the premises, makes and issues the following:

FINDINGS OF FACT

1. The School District of Glenwood City, hereinafter the District, is a municipal employer and has its principal offices at Box 48, Downing, WI 54734.
2. West Central Education Association, hereinafter the Association, is a labor organization and has its principal offices at 105 - 21st Street North, Menomonie, WI 54751.
3. Pursuant to an election conducted by the Commission, 1/ the Association was certified on October 13, 1983 as the bargaining representative of all regular full-time and regular part-time non-professional employes of the School District of Glenwood City, excluding professional, supervisory, managerial, confidential employes and bus drivers.
4. On July 20, 1987 the District filed a unit clarification petition with the Commission seeking the exclusion from the bargaining unit of the position of Head Custodian as a supervisor. The Association contends the position is at best that of a working supervisor, not that of a supervisor.
5. The District operates four school buildings and has a regular custodial staff of ten employes (8 full-time and 2 part-time), including the Head Custodian, in addition to seasonal summer employes. In May of 1983 the District created the position of Head Custodian and Lindy Walz was appointed to the position. Previously, the District had utilized head janitors at both the elementary school and the high school. In early 1985 Walz had a heart attack. Noel Wold served as the acting head custodian until June 1, 1986 when Bernie Jeske was appointed District Maintenance Supervisor/Head Janitor, which position Jeske continues to occupy.

1/ School District of Glenwood City, Dec. No. 20949 (WERC, 10/83).

6. Jeske's job description for 1987-88 lists the following responsibilities:

1. Head janitor - director and supervise all district maintenance personnel. Meet with them as appropriate for purposes of communication.
2. Evaluate all maintenance personnel in conjunction with building principals.
3. In spring and summer, grease the mowers/tractors and sharpen blades.
4. When necessary, pick up school supplies from downtown.
5. In fall, mark the football field.
6. In the spring, mark the track, mark and drag the softball and baseball fields.
7. Mow grass at all school sites (exception: grade school during school year.)
8. In winter, plow snow at all school sites.
9. Haul the garbage from all schools.
10. When time permits, work at the high school on various maintenance projects throughout the year.
11. Direct daily traffic at high school (3:20 p.m.) and at other such requested times.

7. Jeske currently is paid an hourly wage rate in accordance with the contract. Based on their respective lengths of employment with the District, one more senior custodian receives a higher wage rate than Jeske receives and another custodian receives the same rate Jeske receives.

8. Jeske's normal work schedule is 7:00 a.m. - 4:00 p.m., Monday through Friday. He also works every fifth Saturday in a rotation with four other custodians. In the mornings, unless plowing snow, Jeske is at the high school building or making rounds of other buildings. In the afternoons, Jeske is on work details. Duties performed during rounds may include occasionally talking to the janitor on duty to find out if he/she is having any problems. Jeske occasionally checks the work of the custodians during rounds, but not as a routine or on a daily basis. Such work checks are not primarily determined by Jeske. He may be asked to do them or check matters out by the Superintendent (of schools) or one of the building principals. The high school is Jeske's home base and he reports there each morning and checks in with the principal to see if the principal has something for Jeske (to do) during the day. The afternoon always includes Jeske picking up garbage and directing traffic.

9. Jeske issued a verbal admonition in as nice a way as he could to one custodian for sleeping during working hours; he further told the custodian if he has trouble he should come to Jeske and check out or just go home, but shouldn't sleep during working hours because it isn't right; he advised the custodian that if it happened again there would be a suspension without pay or something. In another matter, after a building principal wrote up a directive concerning keys to a custodian (with which Jeske merely agreed after review), Jeske delivered said written directive to the custodian. A copy of such directive was also sent to Jeske.

10. One regular custodian has been hired during the time Jeske has been the Head Custodian. Jeske played a small role in that hiring: at an administrative meeting when the Superintendent and Principals were reviewing the written employment applications already on file when the vacancy arose, Jeske was asked what quality of work had been performed by one of the applicants while such applicant had "subbed" as a custodian, and replied that the work quality of that applicant was good.

11. The District hires additional employees, usually college students, for the summer. Three were so employed in 1987. Jeske was not involved in the hiring process.

12. Jeske "asks" other custodial employes to perform certain projects, as opposed to telling or directing them to do so. During the summer the building principals, not Jeske, determine when a summer work crew will clean the various buildings. Jeske has never done a written evaluation on any of his custodians, but his job description has been expanded to share this duty in the future with the building principals who until very recently were the exclusive sources of written evaluations of custodians.

13. Promotions and transfers are approved by the Board of Education following recommendations in all cases by the School District Superintendent; Jeske's only role is in the area of transfers or reassignments and that role appears to be limited to consultation; other parties consulted by the Superintendent prior to his recommendations in this area to the Board are the building principals and the personnel committee.

14. Jeske has authorized employes to alter their work schedule by leaving early on one day and working more hours on another day. Jeske has approved the working of emergency overtime, only, by custodians; for other overtime Jeske must receive prior approval from the Superintendent. While Jeske has some discretion in authorizing overtime, he is uncertain of his authority in this area. The Superintendent approves all vacation requests. Requests for leaves of absence are submitted to the Principals. Usually, any absence is reported to the District office, which then arranges for a substitute. The Superintendent meets weekly with the Building Principals and the Director of Special Services on Friday afternoon. At least twice a month Jeske is present at the start of the meetings and attends for approximately one-half hour. During those meetings the performance of certain custodial employes has been discussed. The contents of the discussion are not always made known to the subject employes.

15. Jeske does not possess supervisory authority in sufficient combination and degree to be deemed a supervisory employe.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The occupant of the position of District Maintenance Supervisor/Head Janitor is not a supervisor within the meaning of Sec. 111.70(1)(o)1., Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 2/

The position of District Maintenance Supervisor/Head Janitor is included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 20th day of June, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

(Footnote 2 found on Page 4.)

- 2/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

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(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

SCHOOL DISTRICT OF GLENWOOD CITY

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

The sole issue before the Commission is the supervisory status of the position of District Maintenance Supervisor/Head Janitor, currently occupied by Bernie Jeske.

POSITIONS OF THE PARTIES

The Association argues that the parties included the Head Custodian position in the bargaining unit for the 1983 election and there have been no significant changes in the responsibilities of the position since 1983. The Association contends that Jeske is a working foreman, rather than a supervisor, who is primarily responsible for coordinating, but not directing, custodial activities. The Superintendent and the Building Principals are the actual supervisors of the custodians, according to the Association. This is true, the Association asserts, notwithstanding artificial District justifications designed to give an appearance that Jeske has been granted the right to exercise independent judgment in the supervision of employees.

The District argues that Jeske's duties and responsibilities are of a sufficient number and degree to justify his exclusion from the unit as a supervisor. It claims that Jeske directs and assigns the custodial staff, oversees their work, authorizes overtime, allows employees to leave work early, schedules and ensures that all summer cleaning and repairs of buildings are completed, attends administrative meetings, and is involved in the hiring, disciplining, evaluating of performance and changing of building assignments of the custodial staff.

DISCUSSION

The Commission considers the following factors in determining if a position is supervisory in nature: 3/

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

3/ Somerset School District, Dec. No. 24968-A (WERC, 3/88).

Not all of these factors need to be present in any given case, but a sufficient combination of said factors must be present for the Commission to find an employe to be a supervisor. 4/

Job descriptions may well be helpful in the determination of employment duties. Of greater weight in determining supervisory status, however, are the actual duties performed. 5/

In the instant case, Jeske's position reveals few of the factors necessary to confer supervisory status. Those few factors do not constitute a sufficient combination for Jeske to be found a supervisor. The record, instead, strongly supports a finding that Jeske functions as a working foreman or lead worker.

The effective supervisory authority of the Glenwood City School District for its custodians appears to be both shared by or divided between the building principals and the Superintendent of Schools. It is not shared to any meaningful extent by Jeske. Such authority as he may be permitted is insufficient to establish his position to an effective supervisory status.

It is the building principals and the Superintendent, not Jeske, who make all effective hiring recommendations for custodians. It is the building principals, not Jeske, who have effective authority to recommend or implement discipline beyond oral warnings for custodians. It is the Superintendent, not Jeske, who effectively recommends transfers and promotions to the school board. It is the building principals and Superintendent, not Jeske, who are the primary sources of any custodial work checks Jeske performs. It is the building principals, not Jeske, who determine the cleaning schedule to be followed by the summer work crews supposedly under Jeske's supervision. It is the building principals, not Jeske, who receive and process custodian requests for leaves of absence and the Superintendent, not Jeske, who approves them. It is the Superintendent, not Jeske, who authorizes scheduled overtime and vacation scheduling. It is the building principals, not Jeske, who have traditionally provided written evaluations for custodian performance.

Jeske's job interaction with the custodial staff can be best described as "coordinating," not "supervising." By his own testimony, he doesn't order or "tell" district custodians that he wants them to perform specific work projects; he requests or "asks" for their cooperation. Arguably, this could be characterized as an alternative "leadership" style which can be effective; under the circumstances of this case it seems to emerge more clearly as the attribute of a realistic and competent working foreman who knows his effective authority doesn't really extend beyond making "requests" of his co-workers.

Similarly, Jeske seems realistically aware of his lack of authority in the area of discipline. In the instance where a custodian was discovered to be asleep during working hours, to characterize Jeske's reaction as an "oral reprimand" seems more than a trifle hyperbolic. What Jeske did, consistent with the authority he's been actually granted, was to counsel the employe that sleeping on the job was not a good idea.

The other disciplinary instance cited as an example of Jeske's authority is equally unconvincing. This is the one in which Jeske delivered the written reprimand/directive of a building principal to the affected employe: in this instance it seems clear that Jeske, though he may have performed a reporting function by alerting the principal to the objectional conduct, was only a messenger.

The District points to Jeske's newly created job responsibility of providing building principals with his written evaluations of the custodians in their respective buildings as evidence of his supervisory authority. This, however, will only supplement, not replace, the traditional method of custodian evaluation in which the written evaluations were prepared solely by the principals. Thus, whether or not the new responsibility is a sham contrived to create an illusion of

4/ Ibid.

5/ Shawano County (Maple Lane Facility), Dec. No. 20996-A (WERC, 1/84).

supervisory authority as alleged by the Association is immaterial. Moreover, potential supervisory authority and duties do not warrant the conclusion that the employe involved is a supervisor. 6/

Certainly Jeske's rate of pay is another factor which supports a conclusion that Jeske is not a supervisor. Jeske, it would appear, is not being paid for "supervising employes" any more than is a more senior custodian who is paid more than Jeske or another custodian of approximately equal seniority as Jeske who is paid the same as Jeske.

Based on his actual responsibilities, it seems clear that Jeske, as District Maintenance Supervisor/Head Janitor is not a supervisory employe and is appropriately included in the bargaining unit.

Dated at Madison, Wisconsin this 20th day of June, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Henpe
A. Henry Henpe, Commissioner

6/ Oneida County, Dec. No. 12247 (WERC, 11/73); Wood County, Dec. No. 13760 (WERC, 6/75).